

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of: )
MCC Illinois LLC ) CSR-6639-E, 6661-E
Mediacom Illinois LLC ) CSR-6664-E, 6684-E
Mediacom Indiana LLC ) CSR-6668-E
Five Petitions for Determination of Effective
Competition in Twenty-One Local Franchise
Areas in Illinois )

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 2005

Released: September 28, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers five petitions filed with the Commission by MCC Illinois LLC, Mediacom Illinois LLC and Mediacom Indiana LLC ("Mediacom") pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that Mediacom's cable systems serving twenty-one Illinois and Michigan communities (the "Communities") are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and are therefore exempt from cable rate regulation.1 The Communities are listed in Attachment A. No opposition to any petition was filed. We grant the petitions finding that the Mediacom cable systems are subject to effective competition in the listed Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,2 as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.3 The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.4

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel

1 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

247 C.F.R. § 76.906.

3 47 C.F.R. § 76.905.

4See 47 C.F.R. §§ 76.906 & 907.

video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>5</sup> Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>6</sup> The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH has become the fourth largest, MVPD provider.<sup>7</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Communities listed on Attachment A are DBS subscribers, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>8</sup> We further find that the Mediacom cable systems have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area.<sup>9</sup> Mediacom has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>10</sup> Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom sought to determine the competing provider penetration in the Communities by using a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SBCA") that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.<sup>11</sup> Mediacom asserts that it is the largest MVPD in the majority of the Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>12</sup> With

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<sup>5</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

<sup>8</sup> *See* 47 C.F.R. § 76.905(g).

<sup>9</sup> Mediacom Petitions at 5 and Exhibits B & C.

<sup>10</sup> *Id.* at 3-4 and Exhibit A.

<sup>11</sup> *Id.* at 6. The Commission has previously approved the zip code plus four methodology. *See, e.g., Marcus Cable Associates, LLC d/b/a Charter Communications, Inc.*, 17 FCC Rcd 16652 (2002), *aff'd* 18 FCC Rcd 9649 (2003); *Vicksburg Video, Inc.*, 17 FCC Rcd 16659 (2002); *Kilgore Video, Inc.*, 17 FCC Rcd 16662 (2002).

<sup>12</sup> *Id.* at 6. Mediacom states that its subscriber numbers are an estimate derived from its billing system using addresses to which Mediacom provides service. *Id.* at n.19 (for CSR-6684-E) and *Id.* at n.20 (for CSRs 6661-E 6664-E and 6668-E). For CSR-6639-E, Mediacom states that for the Community of St. Elmo, it also used its billing system to determine subscriber numbers. As for the Community of Altamont, Mediacom states that it used the subscriber number reported in its FCC Form 1240 (Form used for Annual Updating for Maximum Permitted Rates for Regulated Cable Service), which reported data from April 2003 through March 2004. Mediacom states, however, that it believes that it may have lost some customers since that time but still asserts that it is the largest

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respect to the Community of Almena, Michigan, Mediacom asserts that it cannot determine the largest MVPD in that Community because the SBCA aggregates the number of subscribers for the DBS providers (869) and this number is larger than the Mediacom subscribers (646) in Almena.<sup>13</sup>

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in those noted Communities. With regard to the Community of Almena, we are able to conclude that this portion of the test is met by analyzing the data submitted for both Mediacom and the DBS providers. If the subscriber penetration for both Mediacom and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.<sup>14</sup> In Almena, the combined DBS penetration rate is 55.96 percent and Mediacom's penetration rate is 41.60 percent.<sup>15</sup> Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

### III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petitions filed by MCC Illinois LLC, Mediacom Illinois LLC and Mediacom Indiana LLC for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing MCC Illinois LLC, Mediacom Illinois LLC and Mediacom Indiana LLC in the affected Communities **ARE REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>16</sup>

FEDERAL COMMUNICATIONS COMMISSION

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MVPD in that Community. *Id.* at 6 and n.20. Mediacom lists its subscribership in Altamont at 770 and the DBS subscribership is listed as 159. Even if Mediacom has lost a few customers, we believe it is likely that it is still the largest MVPD in Altamont.

<sup>13</sup> Mediacom Petition (CSR-6668-E) at 6.

<sup>14</sup> See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

<sup>15</sup> 869 DBS subscribers ÷ 1,553 Almena 2000 Census Households = 55.96%; 646 Mediacom subscribers ÷ 1,553 Almena 2000 Census Households = 41.60%.

<sup>16</sup> 47 C.F.R. § 0.283.

## Attachment A

## Mediacom Cable Systems Subject to Competing Provider Effective Competition

Communities	CUIDS	CPR*	2000	
			Census Households+	DBS Subscribers+
<b>CSR-6639-E</b>				
Altamont City	IL0018	17.69%	899	159
St. Elmo City	IL0020	23.94%	564	135
<b>CSR-6661-E</b>				
Carterville City	IL0121	28.14%	1,933	544
Crainville Village	IL0226	28.94%	425	123
DeSoto Village	IL0587	22.44%	673	151
Eldorado City	IL0192	24.47%	1,945	476
Harrisburg City	IL0191	22.04%	4,093	902
Johnston City (city)	IL0119	26.54%	1,560	414
Murphysboro City	IL0120	19.87%	3,704	736
Whiteash Village	IL0513	20.17%	114	23
<b>CSR-6664-E</b>				
Bement Village	IL0425	25.33%	687	174
Monticello City	IL0233	25.72%	2,146	552
Pesotum Village	IL0539	22.93%	218	50
Tolono Village	IL0427	18.28%	1,083	198
<b>CSR-6668-E</b>				
Almena Township	MI1901	55.96%	1,553	869
Antwerp Township	MI0990	36.72%	3,764	1382
Mattawan Village	MI0191	30.38%	961	292
<b>CSR-6684-E</b>				
Clinton City	IL0159	15.93%	3,157	503
Farmer City (city)	IL0592	16.75%	830	139

Mahomet Village	IL0459	18.86%	1,654	312
Melvin Village	IL1029	15.63%	192	30

CPR = Percent DBS penetration

+ = See Mediacom Petitions